

## **REMARKS**

In the current Official Action, the Examiner rejected claims 1-20, all of which remain pending. Reconsideration of the application in view of the remarks set forth below is respectfully requested.

### **Double Patenting**

In the Office Action, the Examiner rejected claims 1-20 under the judicially created doctrine of obviousness-type double patenting in view of claims 1-21 of co-pending Application No. 09/751,789. Although Applicants do not necessarily agree with the Examiner's assertion, Applicants will consider filing a terminal disclaimer upon allowance of the claims in the cited application. Accordingly, Applicants respectfully request that the Examiner hold in abeyance the double-patenting rejection of claims 1-20.

### **Rejections under 35. U.S.C. § 102**

In the Office Action, the Examiner rejected claims 1, 3-5, 10, 12-14, 19 and 20 under 35 U.S.C. § 102(e) as being anticipated by the Sun Fire 6800 Server reference. Specifically, the Examiner stated:

Claims 1, 3-5, 10, 12-14, 19, and 20 are rejected under **35 U.S.C. 102(e)** as being anticipated by Sun [F]ire 6800 Server, [http://sunsolve.sun.com/handbook\\_pub/Systems/SunFire6800/SunFire6800.html](http://sunsolve.sun.com/handbook_pub/Systems/SunFire6800/SunFire6800.html) (hereinafter 6800). (Emphasis added.) Office Action, pages 3-4.

Applicants respectfully traverse this rejection because the cited reference is not prior art under Section 102(e). The following is a quotation of the relevant portion of 35 U.S.C. § 102(e):

A person shall be entitled to a patent unless: ... (e) the invention was described in (1) an **application for patent**, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a **patent granted on an application** for patent by another filed in the United States before the invention by the applicant for patent. (Emphasis added.)

The cited reference is neither an application for a patent nor a patent granted on an application. Therefore, the cited reference does not qualify as prior art under Section 102(e), so the Examiner's rejection under Section 102(e) is inappropriate.

Moreover, the Sun Fire reference, on its face, is not prior art of any kind. The copyright dates listed on the SunFire reference are "1994-2005" whereas the filing date of the present application is January 4, 2002 so that the current copyright date is over two years **after** the filing date of the present application. The Examiner has failed to particularize any disclosure in the SunFire reference having an actual publication date prior to the filing date of the present application. Accordingly, Applicants respectfully request that the Examiner withdraw these rejections and allow claims 1, 3-5, 10, 12-14, 19, and 20.

### **Rejections under 35 U.S.C. § 103**

The Examiner rejected claims 2 and 11 under 35 U.S.C. § 103(a) as being obvious over the Sun Fire reference in view of the Kistler reference and claims 6-9 and 15-18 as being obvious over the Sun Fire reference in view of the Frostrom reference.

Applicants respectfully traverse these rejections. The Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. M.P.E.P. § 2142. To establish a *prima facie case* of obviousness, the prior art reference must teach or suggest *all* the claim limitations. *Id.* However, as stated above, the Examiner improperly cited the

Sun Fire reference: it is neither a patent nor a patent application, as required by Section 102(e). Indeed, the Sun Fire reference does not appear on its face to be prior art of any kind. Therefore, the Examiner has failed to support a *prima facie* conclusion of obviousness. Accordingly, Applicants respectfully traverse these rejections and request that the Examiner allow claims 2, 6-9, 11, and 15-18.

**Conclusion**

In view of the remarks set forth above, Applicants respectfully request reconsideration of the Examiner's rejections and allowance of all pending claims. If the Examiner believes that a telephonic interview will help speed this application toward issuance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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